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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3566 of 2017
and
W.M.P. No. 3596 of 2017
and
W.M.P. No. 31373 of 2018

K. Venkatesan

... Petitioner

-vs-

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai - 600 028.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to call for the records connected in Na.Ka.No. 4429 of 2016/PaA4, dated 03.06.2016 passed by the First Respondent and quash the same consequently direct the First Respondent to forward the representation of the Petitioner dated 15.04.2016 to the Second Respondent/Inspector General of Registration, Chennai - 600 028 so far as to get posting at transferring Department.

For Petitioner : Mr. G. Elanchezhiyan

For Respondents : Mr. P.Gurunathan
Additional Government Pleader

O R D E R

Heard Mr. G. Elanchezhiyan, Learned Counsel for the Petitioner and Mr. Gurunathan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.



2. The Petitioner, who had been recruited in the post of Assistant under the Tamil Nadu Ministerial Service Rules through the Tamil Nadu Public Service Commission, had been allotted to the Rural Development and Panchayat Raj Department by Order in Na.Ka.No.17500/2012/Pa.A.4 dated 20.12.2012 passed by the First Respondent, where he is presently working.

3. It is claimed that the Petitioner had met with an accident on 09.05.2013 and suffered a leg injury and he had made a representation dated 13.10.2015 seeking transfer to the Registration Department for which orders were directed to be passed by the First Respondent in the order dated 29.01.2016 in W.P. No. 3282 of 2016 passed by the Court. In furtherance thereto, the First Respondent by Order in Na. Ka. No. 4429/2016Pa.A.4 dated 03.06.2016 has held that there were large number of vacancies in Rural Development and Panchayat Raj Development in Thiruvannamalai District at that relevant point of time and rejected the said representation made by the Petitioner, which is challenged in this Writ Petition.

4. Learned Counsel for the Petitioner quoting Rule 20 of the Tamil Nadu Ministerial Service Rules asserts that the reasons stated for declining the transfer sought by the Petitioner is contrary to the real factual position and ought to have granted the transfer as sought by him.

5. At this juncture, reference may be made to Rule 20 of the Tamil Nadu Ministerial Service Rules, which reads as follows:-

"20. Transfers of probationers and approved probationers:-

(a) Notwithstanding anything contained in rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned -- (i) from one office in a departmental unit to another office in the same departmental unit; (ii) temporarily from an office in one departmental unit to an office in another departmental unit if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and (iii) permanently from an office in one departmental unit to an office in another departmental unit: Provided that a transfer under



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clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department. Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new district.

(b) The grounds of administrative necessity referred to in sub-rule (a) may be presumed to exist and the Commission's consent referred to in that sub-rule may be presumed to have been given in the case of mutual transfers permanently from an office in one departmental unit to an office in another departmental unit if the persons desiring mutual transfers agree -- (i) that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their first appointment to the service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his first appointment in the service; and (ii) that they will forego the travelling allowance for their journeys to the departmental units to which they are transferred.

21. Allotment of candid "

On a plain reading of the said Rule, it is evident that it is merely an enabling provision to effect inter-departmental transfer of employees, which does not create any indefeasible right in favour of any employee to seek inter-departmental transfer in the services of the State Government.

6. In this backdrop, reference must be made to the decision of the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R.Apparao [(2002) 4 SCC 638], where it has been explicated as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding



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legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh -vs- State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

In view of this legal position coupled with the facts of this case as borne out from the record, there does not appear to be any justification to interfere with the impugned order passed by the First Respondent in the exercise of the discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution. At the same time, it must, however, be made clear that the refusal of this Court to entertain this Writ Petition shall not be construed as precluding the concerned authorities, on their own accord, from transferring the Petitioner to any department in accordance with law.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skr



To

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai - 600 028.

+1cc to Mr. G. Elanchezhiyan, Advocate, S.R.No.11496
+1cc to the Government Pleader, S.R.No.12002

W.P. No. 3566 of 2017

GP(CO)
CT/08/04/2022